

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

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|-------------------------|---|-------------------------|
| CAROLYN A. STANLEY, |) | |
| |) | |
| Appellant, |) | |
| |) | |
| v. |) | C.A. No. 09A-10-008 WCC |
| |) | |
| UNEMPLOYMENT INSURANCE, |) | |
| APPEAL BOARD, |) | |
| |) | |
| Appellee. |) | |

Submitted: June 16, 2010
Decided: September 13, 2010

OPINION

Appeal from Unemployment Insurance Appeal Board. REVERSED.

Carolyn A. Stanley, 11 Lexington Drive, Middletown, DE 19709. *Pro Se* Appellant.

Philip G. Johnson, Esquire, Department of Justice, 820 N. French Street, Wilmington, Delaware 19801. Counsel for Unemployment Insurance Appeal Board.

CARPENTER, J.

In this matter, Carolyn A. Stanley (the “Appellant”) challenges the determination by the Unemployment Insurance Appeals Board (the “Board”) that she is not eligible to collect unemployment benefits because she continues to perform minimal, uncompensated services for a corporation that has ceased business operations but that has not yet been legally dissolved. The Court must determine whether the Board’s conclusion is supported by substantial evidence and is free from legal error. Upon review of the record in this matter, the Court concludes that Appellant is eligible to receive benefits. Accordingly, the decision of the Board is reversed.

Facts

Appellant was employed as the Vice President and Secretary of Stanley Builders, Inc.¹ She owned fifty percent of the stock of Stanley Builders.² Stanley Builders, established in 1971, was a general contractor that built custom homes and other light commercial buildings.³ In 2008, Stanley Builders employed a staff of five full-time employees and one part-time employee in addition to the Appellant and her husband.⁴ In 2008, Appellant was paid a salary of \$35,000 as compensation for her services as an officer of Stanley Builders.⁵

¹ Finding of Facts at 1.

² *Id.*

³ Decision of Referee at 6.

⁴ *Id.*

⁵ *Id.*

Stanley Builders ceased business operations on April 1, 2009.⁶ All of its employees have been discharged.⁷ The company paid rent for its office space through March 1, 2009.⁸ All five of the telephone lines registered to the business have been disconnected.⁹ The business also sold its vehicles as well as its office furniture and construction equipment.¹⁰ However, the corporation has not filed for bankruptcy and has not filed for a Certificate of Dissolution from the Secretary of State.¹¹

Appellant estimated that she spent three to four hours per week doing paperwork to wind up the business of the corporation.¹² She received no compensation for her services,¹³ and both Stanley and her husband are actively seeking other employment.¹⁴

The decision to close Stanley Builders was the result of adverse economic conditions. The corporation earned a net income of \$52,000 in 2005 and \$19,000 in 2006.¹⁵ It suffered net losses in 2007 and 2008.¹⁶ The business reported no

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Transcript of Appeal Board Hearing at 7 (May 22, 2009).

¹³ Appellant's Opening Brief at 2.

¹⁴ Transcript of Appeal Board Hearing at 13 (July 22, 2009).

¹⁵ Decision of Referee at 6.

¹⁶ Decision of Referee at 6.

income during the second quarter of 2009. Stanley Builders' last contract to build a house was in January 2008 and its last settlement was in August 2008.¹⁷

Procedural Background

Appellant filed a claim with the Delaware Department of Labor on April 5, 2009.¹⁸ On April 23, 2009, the case was referred to an Appeals Referee for an initial hearing and determination on whether her ownership of the business affected her eligibility to receive unemployment benefits.¹⁹ A hearing was held on May 19, 2009, at which time it was determined that Appellant was disqualified from receiving benefits under 19 *Del. C.* §3314(1) because she voluntarily left her employment without good cause.²⁰ Appellant subsequently appealed to the Board, which heard Appellant's case on July 22, 2009.²¹ On October 19, 2009, the Board issued a decision affirming and modifying the Referee's decision to deny benefits to Appellant.²² The Board concluded that the Referee's determination that Appellant was disqualified from collecting benefits because she had voluntarily left her employment without good cause was factual and legal error. However, the Board concluded that Appellant was ineligible for benefits because she was still

¹⁷ Decision of Board at 2.

¹⁸ Finding of Facts at 1.

¹⁹ Notice of Determination at 2.

²⁰ Decision of Referee at 7.

²¹ Decision of Board at 1.

²² *Id.* at 2.

performing services for the corporation and thus she failed to satisfy the definition of unemployment under 19 *Del. C.* §3302(17).²³ On October 28, 2009, Appellant timely filed notice of appeal with this Court.

Standard of Review

When reviewing an appeal from the Board, this Court's role is limited to evaluating the record in a light most favorable to the prevailing party in order to determine if the record before the Board included substantial evidence that a reasonable mind might accept as adequate support for the conclusion and that it is free from legal error.²⁴ The Court, in considering an appeal of the Board's decision, does not weigh any evidence or make any factual findings but only determines if substantial evidence exists upon which the Board's findings can be legally supported.²⁵ Furthermore, where a claimant is a *pro se* litigant, the Court may construe the written submissions and arguments of such a claimant as a challenge to the factual findings and legal conclusions of the Board.²⁶

Discussion

The material facts in this case are not in dispute. Rather, the dispute turns on the construction of Delaware's unemployment compensation statute. To be

²³ *Id.* at 3.

²⁴ *Breeding v. Contractors-One-Inc.*, 549 A.2d 1102, 1104 (Del. 1960).

²⁵ *Hubble v. Delmarva Temporary Staffing, Inc.*, 2003 WL 1980811 at *2 (citing *McManus v. Christina Service Co.*, Del. Super., C.A. No. 96A-06-013, Silverman, J. (Jan. 31, 1997) Op. and Order at 4).

²⁶ *Witcher v. Delaware Park*, 2002 WL 499431, *2 (Del. Super. 2002).

eligible to receive benefits, a claimant must be an unemployed individual. 19 *Del.*

C. §3315. The statute defines unemployment to mean:

[A]n individual is unemployed in any week during which the individual performs no services and with respect to which no wages are payable to the individual, or in any week of less than full-time work if the wages payable to the individual with respect to such week are less than the individual's weekly benefit amount plus whichever is the greater of \$10 or 50% of the individual's weekly benefit amount.

19 *Del. C.* §3302(17). The Board found that the definition of “unemployed” requires both that (1) the individual performs no service *and* (2) no wages are payable to the individual. As such, they concluded that Appellant was not eligible for benefits because she continued to perform uncompensated services for the corporation even though it was no longer in business. However, at the time the Board made this determination, it did not have the benefit of a recent court decision involving a similar issue.

Recently, this Court held that a corporate officer who performs minimal services related to the winding up of a defunct corporation and who receives no compensation for such services is unemployed and eligible for benefits, even though the corporation has not yet filed a Certificate of Dissolution.²⁷ The Court rejected the Board's interpretation of the definition of an unemployed individual, noting that the appellant's “corporate trustee services in wrapping up are minimal,

²⁷ *Bachman v. Bachman & Associates, Inc.*, C.A. No. 09A-08-005, at 16 (Del. Super. May 26, 2010).

are not the same services for which he had been compensated, and are not services for compensation.”²⁸ Furthermore, the *Bachman* Court declared, “[T]o construe the Delaware statute to mean that [appellant’s] minimal, uncompensated efforts to wrap up the business are services that make him ineligible for unemployment compensation would [create] an inconsistency between the first and second clauses of 19 *Del. C.* §3302(17).”²⁹

The *Bachman* case presented facts that are virtually identical to those presented here. Mr. Bachman was president and 50 percent owner of Bachman & Associates, a custom decorating business that closed in March 2009 because of economic conditions.³⁰ He had managed the day-to-day operations of the business and received a salary.³¹ Following the closure of his business, Mr. Bachman spent approximately two hours per week wrapping up the corporate business and received no compensation for this assistance.³² During this period, he also sought other employment.³³

Mr. Bachman’s claims for unemployment insurance benefits with the Department of Labor were also denied. First, the Appeals Referee denied his claim on the grounds that he was disqualified for unemployment benefits because

²⁸ *Id.* at 14-15.

²⁹ *Id.* at 16.

³⁰ *Id.* at 2.

³¹ *Id.*

³² *Id.*

³³ *Id.*

he voluntarily left his employment without good cause.³⁴ On appeal, the Board affirmed and modified the Referee's decision and denied benefits to Mr. Bachman because he was ineligible. The Board determined that he remained employed as long as the corporation had not been legally dissolved and he continued to perform services for the corporation, even if he received no compensation for such services.³⁵

Here, Appellant was a corporate officer of a corporation that has ceased business operations because of economic conditions. All aspects of the business operation have been dismantled. While Appellant has continued to perform minimal services for the corporation associated with winding up the corporation's business, she receives no compensation for such services and they have not prevented her from seeking other employment opportunities.

Given the substantial similarity between the facts presented in the *Bachman* case and the facts presented in this case, this Court feels compelled to adopt the rule in *Bachman*.³⁶ This Court has ruled that a corporate officer who continues to perform minimal services as a corporate trustee to assist in wrapping up the business of a defunct corporation and who receives no compensation for such services is eligible for unemployment benefits and the facts of this case are

³⁴ *Id.* at 3.

³⁵ *Id.*

³⁶ The Court appreciates that there is a motion for reargument pending filed by the State in the *Bachman* case and if rejected, it is likely the issue will proceed to the Delaware Supreme Court. However, staying a decision in this case would only delay unemployment benefits to the Appellant which under present case law she is entitled to receive and therefore this decision has been rendered.

undistinguishable. Accordingly, Stanley is eligible to receive unemployment benefits.

Conclusion

For the foregoing reasons, the decision of the Unemployment Insurance Appeal Board is REVERSED.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.
Judge William C. Carpenter, Jr.